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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1939.

No. [redacted] 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, A VOLUNTARY ASSOCIATION; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS AND JOSEPH L. PATTERSON,

Petitioners,

VS.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION NO. 819, A VOLUNTARY UNINCORPORATED ASSOCIATION; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, AN AGRICULTURAL COOPERATIVE CORPORATION OF THE STATE OF WISCONSIN,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARTHUR R. SEELIG,
Counsel for Respondents.

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OCTOBER TERM, A. D. 1939

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Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF FACTS AND ISSUES INVOLVED.

The respondents feel that the "Summary Statement of Matter Involved," which appears at pages 2 to 12 of the

petitioners' application for writ of certiorari is misleading and does not correctly set forth the facts of the case and the issues involved. In order to have the facts appear to fall within certain desired legal rules, the petitioners have distorted the facts and have in many instances omitted important elements. The petitioners attempt to show that the facts disclose a bona fide labor dispute; that their sole purpose is unionization, and that the means employed were lawful and peaceful. Actually the record shows no labor dispute, but rather a case of illegal attempts by a labor union to control price, eliminate competition, regulate methods of business conduct pursuant to an unlawful conspiracy, carried out by means of boycott, violence, intimidation, fraud and other illegal and criminal methods.

The case involves an action brought seeking relief against the acts of the defendants preventing the sale of cut-rate milk in the City of Chicago, Illinois.

Respondents accept the designations adopted by the petitioners and will herein refer to themselves as *plaintiffs*, and will herein refer to petitioners as *defendants*, as in the Court below. Also, for greater convenience, the pertinent sections of the Sherman Act and the Clayton Act are collectively herein referred to as the *Anti-Trust Laws*.

The contention of the plaintiffs supported by the lengthy record and the findings of the District Court, and the decision of the Circuit Court of Appeals is that the plaintiff dairy belongs to a special small group of dairies known as *cut-rate dairies*, because they distribute their products in large quantities to cash and carry stores, which stores in turn sell such milk to the public at reduced prices made possible by the substantial saving in distribution costs over the cost of delivering milk to the door step of the consumer

by means of the milk wagon driver, such as are members of the defendant union, (District Court findings "Ninth" and "Tenth," R. 249). That in order to prevent the sale of cut-rate milk in the city of Chicago, the defendants have conspired to control and restrain the interstate commerce in such milk, to control the price thereof, to prevent competition, to prevent persons from engaging in such business, to ruin and destroy the plaintiff dairy's business, in order to continue their monopoly of the means of distribution of milk in the City of Chicago. That the defendants in order to give effect to such conspiracy have carried out a program wherein the elements of violence, intimidation, boycott and picketing of independently owned milk stores, and the distribution of false and libelous circulars are inextricably intermingled. (District Court findings "Eleventh" and "Twelfth," R. 249; Master's Report, paragraph 44, R. 222 and 223).

The defendants (pages 2 to 4) state that the case arises out of an economic dispute in the milk industry in the city of Chicago. The record and findings indicate that this is true only to the extent that the acts of the defendants are pursuant to their conspiracy and intent to preserve an outmoded and extravagant method of milk distribution, and to prevent the entry into the field, or the continuance in operation, of dairies employing more economic methods of milk distribution. (R. 367).

The plaintiffs' contention is that the subject of the economic dispute is not (as defendants say) whether the plaintiff Lake Valley Farm Products should sign a contract with the defendant union, because neither the lengthy record nor the extensive briefs before the Circuit Court of Appeals, nor the findings of the lower Courts, in-

dicates at any point that such a contract was ever presented for signature or that such a contract was ever intended. The plaintiff dairy employs no drivers, such as are members of the defendant union, but sells all of its products to independent "vendors" who sell the milk to their own customers. (R. 361, 248). An examination of the form of contract which the defendant union has entered with other dairies employing drivers indicates that, such a contract applies only to "employee" drivers. Neither the plaintiff dairy nor the independent distributing stores employ any persons amenable to organization or acceptable to membership in the defendant union.

Since the vendors are independent business people, their conditions of employment can not be the issue of the case and do not present the basis of a labor dispute. Actually, (although not in issue), because of the inherent advantages of cash and carry store delivery, as was found by the District Court, and Circuit Court of Appeals, the vendors are able to distribute five or six times as much milk by working shorter hours, and their net income is larger than the scale set by the defendant union for milk wagon drivers. (R. 362, 368).

The defendants state that they are opposed to the vendor system of distribution and attempt to show that vendors earn less than the amount fixed by their wage scale. They attempted to introduce evidence as to earnings by certain *retail* vendors who deliver to the door step of the ultimate consumer. By introducing this type of evidence, the record indicates that the defendants' real opposition is not to the vendor, but to the entire *method of cut-rate distribution.* As the record reveals, if the vendor delivers to the consumer's home he must make as many stops and can handle only as small a quantity as the company-operated route. The *retail* vendor offers no serious competition to

the drivers of the defendant union. The record fails to indicate any activity on the part of the defendant union directed against retail vendors. All of the illegal activities of the defendant union have been directed against cut-rate dairies and independent stores distributing cut-rate milk. The findings of the lower courts were all uniform that the cut-rate method of store distribution was the real cause of the saving in delivery cost. (District Court findings, "Ninth" to "Twelfth," R. 249; C. C. A. decision, R. 362) This is based upon the record showing that an average of 1200 points of milk can be delivered daily by making 10 to 12 stops over a period of 3 to 5 hours on a cut-rate route, rather than a daily average of about 230 points by making 100 or more stops over a period of 7 or 8 hours. (R. 73, 71, 89, 92, 93, 96, etc.)

Defendants' sworn answer, their form of dairy contract, the extensive record, and the findings of the lower courts, all clearly show that a cut-rate vendor would not be amenable to membership in their union. The testimony is that the union never contacted the plaintiff dairy or any vendor distributing its goods for membership, and that no vendor would be accepted unless he abandoned his method of distribution and thereafter became employed by a dairy. (R. 112, 108; defendants' answer, R. 43 to 59) This latter merely means that if a vendor ceased being a vendor, he, like any other person employed by a dairy as a milk wagon driver, would be acceptable to membership.

The defendants in their petition say that they have no interest in the price of milk. The decision of the Court of Appeals and the findings by the District Court show that all violence is directed at cut-rate stores and cut-rate dairies. Numerous incidents were testified to, in which members of the defendant union actually voiced opposition to the sale of cut-rate milk and asserted demands con-

cerning price. (R. 61-63, 65, 66, 69, 73, 76, 79, 92, 95, 99, 100, 114, 118, 125) The record indicates that the cut-rate method of distribution and sale at lower prices is the only real obstacle to complete monopoly by the defendants. The defendants admit in the record, (which they seek to contradict in their petition), that the plaintiff dairy is of the special class known as cut-rate dairies. (R. 108) The statement of counsel in the petition that all dairies sell cut-rate milk is misleading. The testimony of the officers of the defendant union is that the plaintiff dairy belongs to the small group of cut-rate dairies not employing members of the defendant union, and the findings of all of the lower courts single out the plaintiff in that regard. (R. 107, 108; District Court findings, R. 249; C. C. A. decision, R. 362)

The picketing in opposition to the sale of cut-rate sale, as indicated by the record was not peaceful. As was found by the Master, if the picketing failed, the store would be bombed or its windows broken or other acts of violence would be committed. (R. 222). The picketing, both as to time and place, concurred with and was inextricably bound up with violence. The picketing was merely one of various interwoven means concurrently used. The means used were bombings, window smashing, and other violence, boycott, picketing, destruction of delivery equipment, distribution of handbills and circulars, etc.

Analysis of the Opinion of the Circuit Court of Appeals

The Circuit Court of Appeals for the 7th Circuit, (R. 360 to 370), held that the plaintiffs were entitled to injunctional relief. The decision after stating the nature of the cause, the parties and the pleadings, finds (by adopting the findings of the District Court) the manner in which the milk is daily purchased in and transported from Wiscon-

sin, and at once bottled and sold by the plaintiff dairy to independent business persons called "vendors," for distribution, and in turn, sold by them to the cut-rate cash and carry stores, all within a matter of several hours from its production in Wisconsin. That the milk and cream of the plaintiff dairy is mingled with, indistinguishable from, and sold in competition with other milk and cream, over 40% of which milk and over 75% of which cream is purchased from points outside of Illinois. These facts as to interstate commerce were not denied by the defendants.

The decision distinguishes the plaintiff dairy as a *cut-rate* dairy in that it distributes its milk to retail stores for cash and carry sale at prices substantially less than the prevailing prices for milk delivered by dairies to the home. That because of the relatively large amount of milk delivered to each store, that the delivery cost is substantially less. The Court found that the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and to the dairies, and that the patronage of many of such stores were lost because of the activities of the defendants. That (following the report of the Master in Chancery), the defendant union caused stores to be bombed or their windows to be smashed if the picketing was not successful.

The decision then finds that the efforts of the defendant union constitute a violation of the Anti-Trust Laws; that conspiracy has been shown, and that the object of the conspiracy was the elimination of these cut-rate distributors.

The decision further finds the controversy is over the sale of cut-rate milk, and that no labor dispute is involved. Among other things it is found that the plaintiff dairy employs no persons who would be amenable to membership in the defendant union, and that the vendors in question are

independent contractors; that the only condition upon which the defendant union would accept any vendor as a member would be if he ceased selling cut-rate milk, and if he became an employee of a dairy. The acts of the defendants are declared to constitute an unlawful secondary boycott.

The decision further declares that the argument of free speech may not be availed of, and that the same has been determined by the case of *Meadowmoor Dairies* v. *Milk Wagon Drivers Union of Chicago,* 371 Ill. 377, certiorari denied 308 U. S., on October 23, 1939. It may be noted that the defendants in their answer plead that the findings of the court in the earlier *Meadowmoor* case are binding upon the parties to this cause. (R. 56).

The decision further found that because of the great number of stores involved and the magnitude and seriousness of the activities that the local police officers were unable to control the situation, and that the plaintiffs have no adequate remedy at law.

The decision points out that its only difference from the District Court is as to the application of the law to the facts which both courts and the Master had found; that the Court of Appeals, among other things, in determining as to the question of Anti-Trust violation, applied the more recent tests as supplied by the *National Labor Relations Cases,* 301, U. S. 1; *Santa Cruz Packing Company* v. *National Labor Relations Board,* 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601; and *United States* v. *Rock Royal Cooperative, Inc.,* 307 U. S. 533; and had not felt itself limited to the arbitrary test of the "stream of commerce" doctrine, familiar in the application of Federal and State taxes. Comment is made on the illegal method and scheme employed by the defendants

as an indication of the fact that the picketing was not peaceful, but was involved with and part of the illegal and violent tactics of the defendants.

The testimony upon which the findings of fact were made by the courts below and by the Master, concerning the methods employed are found in the record at the following pages:

Bombings: (R. 66, 69, 76, to 129).

Smashing of Store Windows: (R. 65 and 66, 60, 61, 62, 69, 73, 76, 78, 79).

Seizure and Destruction of Milk Trucks: (R. 66, 77, 78, 116 and 122).

Picketing and Concurrence of Violence: (R. 60, 61, 62, 80-81, 115, 73, 76, 129).

Violence and *Destruction Cases Defended and Settled by Defendant Union*: (R. 69, 78, 119, 126).

Efforts to Control Price and To Eliminate Sale of Cut-Rate Milk: (R. 61-62, 63-65, 66, 73, 76, 79, 80, 91, 92, 95, 99, 100, 114, 118, 125, 127).

Findings of Fact by the District Court.

As is indicated by the decision of the Circuit Court of Appeals, there is no inconsistency as to the facts. The only difference arises as to the legal conclusions to be applied to these facts.

The District Court after finding the facts as to interstate commerce, and the sale by the plaintiff dairy to the vendors for distribution by them to their store customers, among other things found (in substance) as follows:

That the plaintiff dairy is a *cut-rate* dairy, in that it distributes its milk through retail stores at cash

and carry sale, at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home. (R. 249).

That the cost of delivery to the store is substantially less than the cost of delivering milk on a retail route to the door step of the ultimate consumer, because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy. (R. 249).

"Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been submitted to other acts of violence; that cut-rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut-rate dairies have been kidnapped and destroyed, and other acts of violence committed." (R. 249).

"Twelfth: That the picketing by the Defendant Union has all taken place at, and in front of stores selling the products of the plaintiff dairy and no picketing has taken place at the plaintiff dairy plant; that in some instances deliveries of other necessary food products into stores selling plaintiff dairy's products have ceased." (R. 249).

"Fourteenth: Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the present Bill of Complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; that more than one hundred stores of plaintiff dairy have been picketed; that there is no way to ascertain the number of consumer patrons lost by the acts of the defendants." (R. 250).

The Master in Chancery, although holding against the respondents upon the *questions of law* involved, was compelled to specifically find as to violence and the inseparability of picketing from illegal acts as follows:

> "It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.
>
> The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well." (R. 222).

Proceedings in the Courts Below.

By the sworn answer of the defendants filed in the District Court, it is admitted that they have caused the picketing complained of, and by the copy of the contract form attached to such answer, referring only to employed drivers, it is indicated that vendors are not acceptable to membership in the defendant union. Also it is shown by their answer that no efforts were made to have vendors join that union, but rather to have vendors cease to operate as such. (Answer R. 43 to 59).

The defendant union by its officers admitted that by agreement with other unions, they stopped the delivery of other food commodities into the various independent stores distributing the products of the plaintiff dairy (R. 106), and also admitted that vendors as such were not taken into the defendant union and that no efforts were made at any time to submit a contract to the plaintiff dairy or to organize its workers (R. 112, 108); that the defendant union has about 5300 milk wagon drivers as members and that the independent cut-rate dairies employ a total of 283 men. (R. 108).

SUMMARY OF ARGUMENT.

I.

This Court has determined that where the object to be accomplised by a labor union is illegal and outside the normal activities of unionization, or where the means employed by a labor union to further its own ends are of themselves illegal, relief from such acts may be had by injunction.

A.

If the object is unlawful, all means employed in furtherance of such object may be enjoined.

B.

If illegal means are employed which are inseparable from legal means, all means may be enjoined.

II.

This Court has determined that conspiracies and combinations by any association of persons having for their purpose the control of price, elimination of competition and the effectuations of monopolies which burden and restrain interstate commerce, violate the Anti-Trust Laws of the United States and are enjoinable.

A.

The Norris-LaGuardia Act grants no immunity to labor unions if their acts are illegal and violate the Anti-Trust Laws.

III.

This Court has determined that the constitutional guarantee of free speech does not prevent relief by injunction from words pursuant to illegal activities and purposes.

ARGUMENT.

I.

This Court has determined that where the object to be accompished by a labor union is illegal and outside the normal activities of unionization, or where the means employed by a labor union to further its own ends are of themselves illegal, relief from such acts may be had by injunction.

A.

If the object is unlawful, all means employed in the furtherance of such object may be enjoined.

The defendants in support of their contention that the Federal Courts by virtue of the provisions of the Norris-LaGuardia Act, have no jurisdiction to issue an injunction, after commenting upon the provisions of the Act itself, refer to only three decisions of this Court: *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Lauf* v. *Schinner*, 303 U. S. 323; and *Senn* v. *Tile Layers' Union*, 301 U. S. 468. These cases refer only to legal objectives of persons representing laborers sought to be accomplished by legal means, and obviously have no application in the present case. Of the decisions by lower courts cited by defendants: *Levering* v. *Morrin*, 71 F. (2d) 284; *Blankenship* v. *Kurfman*, 96 F. (2d) 450; *Grace Co.* v. *Williams*, 96 F. (2d) 478, the courts there determined that both the object and means used were lawful.

This Court in several decisions has held that if the object is illegal, *i. e.* an object not one of legitimate union concern, that relief, against all means used, may be had by injunction.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Gompers v. *Buck's Stove & Range Co.,* 221 U. S. 418.

Eastern States Retail Lumber Dealers' Association v. *United States,* 234 U. S. 600.

Loewe v. *Lawlor,* 235 U. S. 522.

American Steel Foundries v. *Tri-City Trades Council,* 257 U. S. 184.

Meadowmoor Dairies, Inc. v. *Milk Wagon Drivers' Union,* 371 Ill. 377; certiorari denied 308 U. S. .....; 84 L. ed. 95.

Specifically considering the applicability of the Norris-LaGuardia Act, the Circuit Court of Appeals for the Seventh Circuit has similiarly held that if the purpose of the union activities is unlawful an injunction may issue against picketing and other means. *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825, at page 830:

> "We are clearly of the opinion that no labor question is involved, and the District Court does not therefore deny jurisdiction by reason of the labor injunction act (Norris-La Guardia Act, U. S. C. A. Sec. 105 to 115)."

and at page 833:

> "The conspiracy was one to ruin appellant's business. Therefore, the means adopted were unlawful. • • • If, therefore, individuals conspired to commit the wrongful act of ruining appellant's business, the

means, even though of themselves innocent, were actionable. Aside from whether the picketing was peaceful (*American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360), it was unlawful when its object was as here disclosed."

Also: *Fehr Baking Co.* v. *Bakers' Union,* 20 F. Supp. 691.

As the defendants themselves set forth in their brief, pages 25 to 28, a labor dispute must involve by the terms of the Norris-LaGuardia Act, either (a) terms or conditions of employment, or (b) the representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. If the defendants seek exemption under this Act, they have the burden of showing that the present case falls within its terms.

Since the Circuit Court of Appeals, upon the record and the District Court's findings of fact, has found the existence of a conspiracy to prevent the sale of cut-rate milk and to control the distribution of milk in Chicago, (R. 366 and 367) it becomes apparent that the Norris-LaGuardian Act cannot apply. Such purposes cannot be the basis of a labor dispute.

If illegal means are employed which are inseparable from legal means, all means may be enjoined.

This Court has held that if illegal means are employed in such relation to other means, of themselves lawful, so as to be inseparable therefrom, that all means, regardless of the purpose to be accomplished, become unlawful.

Reference may again be had to the case of *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, at page 478, and to the case of *Gompers* v. *Buck's Stove and Range Co.,* 221 U. S. 418, at page 439.

In the present case as set forth at length in the decision of the Circuit Court of Appeals, the Master in Chancery found that picketing and violence were but concurring means to accomplish a desired end. When a store failed to yield after what appeared to be "peaceful picketing," the pickets were withdrawn and the store bombed or its windows smashed. (R. 363 of decision; R. 222 and 223 of Master's Report).

Since most of the decisions as to illegal purposes and activities of labor unions arise from the determination of the applicability of the Anti-Trust Laws, and are so presented under that topic hereinafter, only a few references have been made at this point, and wherever possible to cases dealing exclusively with the phase of the question above considered.

The contention of the plaintiffs is that decisions construing normal and legal union objectives are not applicable to the present case. That upon the findings of illegality both as to purpose and means made by the decision of the Circuit Court of Appeals, upon the findings of fact by the District Court and the report of the Master in Chancery, only cases in which similar elements of illegality are present, may be applied.

II.

This Court has determined that conspiracies and combinations by any association of persons having for their purpose the control of price, elimination of competition and the effectuation of monopolies which burden and restrain interstate commerce, violate the Anti-Trust Laws of the United States and are enjoinable.

Facts and Findings as to Interstate Commerce.

The Circuit Court of Appeals determined that the immediate result of the activities of the defendants was to retard the flow of milk in interstate commerce.

The facts as to the flow of milk into Chicago, from other states and its immediate distribution to the consumer is not denied by the defendants, nor do they in their present petition argue the question of interstate commerce, except to contend that their activities directed at such distribution, do not burden such commerce; that they are granted special immunity.

The record indicates that fluid milk is a perishable commodity which cannot be stored, and by health regulation must reach the consumer within a matter of hours after its production. In view of these findings, there can be but little question that fluid milk is in a continuous flow of interstate commerce until it reaches the consumer, and any interference before it is in the hands of such consumer, effects and burdens interstate commerce.

In addition, the record shows actual interference with delivery trucks which were the instrumentality of and were

in interstate shipment. (R. 65, 77, 78, 116, 122). The Circuit Court of Appeals comments that there is no conflicting testimony as to the fact of such interference. (R. 366).

Interference with the sale of milk in the City of Chicago violates the Anti-Trust Laws of the United States.

In addition to the foregoing "factual" conclusion that milk distribution in Chicago is a part of interstate commerce, the Secretary of Agriculture of the United States, pursuant to authority vested in him, and after public hearing and findings made under the Agricultural Marketing Act of 1937 (50 Stat. 246), promulgated a certain marketing agreement identified as Order No. 41, regulating the handling of milk in the Chicago, Illinois, marketing area, thereby declaring that the handling and marketing of milk in such area is in the current of interstate commerce. This declaration and order is in accord with the decisions of this Court as to the New York milk marketing area.

United States of America v. *Rock Royal Cooperative, Inc.*, 307 U. S. 533, determined June 5, 1939.

In addition, the contention of the plaintiffs that interference with Chicago distribution may violate the Anti-Trust Laws concurs with the expressed position taken by the Anti-Trust Division of the Department of Justice of the United States. In the case of *United States of America* v. *The Borden Co., et al.*, this Court, October term 1939, No. 397, reversed the decision of the District Court for the Northern District of Illinois. A large group of defendants, including the defendants in the present case had been indicted for violating the Anti-Trust Laws, for the very acts of price-fixing, monopoly, and elimination of competion involved in the present proceeding. This Court, on December 4, 1939, determined that the indictment in that

case was sufficient, holding, however, that certain questions peculiar to labor unions were not open to consideration on that appeal.

That local sales may be considered a part of interstate commerce, because of their proximity to or effect upon the same has been well established by decisions of this Court.

National Labor Relations Board v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1.
Baldwin v. *Seelig,* 294 U. S. 511.
National Labor Relations Board v. *Fainblatt,* 306 U. S. 601.
Santa Cruz Packing Co. v. *National Labor Relations Board,* 303 U. S. 453.

Similar decisions have been rendered by this Court as to the intermingling of local transactions with interstate commerce in the cases of:

Consolidated Edison Company v. *National Labor Relations Board,* 305 U. S. 197.
Currin v. *Wallace,* 306 U. S. 1.
Mulford v. *Smith,* 307 U. S. 38.
Nebbia v. *New York,* 291 U. S. 502.

Decisions of this Court construing the Anti-Trust Laws have uniformly held that acts of themselves local will be enjoined whenever necessary for the protection of interstate commerce against restraints:

Local 167, I. B. T. v. *United States,* 291 U. S. 293.
Loewe v. *Lawlor,* 208 U. S. 274.
Eastern States Lumber Dealers Association v. *United States,* 234 U. S. 614.
Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association,* 274 U. S. 37.
Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

The Circuit Court of Appeals, in its decision, and in accord with the findings of fact of the District Court, also finds that the controversy arises out of the opposition of the defendants to the method of distribution and the manner of conduct of the business of the plaintiff dairy. This Court has frequently announced that combinations and conspiracies which involuntarily limit third parties so that they may engage in interstate trade only upon the terms and conditions and in the manner established, are *per se* direct and substantial burdens upon interstate commerce.

Interstate Circuit, Inc. v. *United States,* 305 U. S. 28.

Local 167, I. B. T. v. *United States,* 291 U. S. 293.

Bedford Cut Stone Co. v. *Stone Cutters' Association,* 274 U. S. 37.

Industrial Association v. *United States,* 268 U. S. 64.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Loewe v. *Lawlor,* 208 U. S. 274.

Montague & Co. v. *Lowry,* 193 U. S. 38.

The defendants seek to prevent persons from engaging in the cut-rate cash and carry distribution in order that their control of the means of distribution might be perpetuated.

Since the activities of the defendant union were for illegal purposes, they may not be justified as having been done to further their own ends or to protect their own interests. Such a purpose has never justified an illegal program.

Interstate Circuit v. *United States,* 306 U. S. 208.

United States v. *Brims,* 272 U. S. 549.

Eastern States Retail Lumber Dealers' Association v. *United States,* 234 U. S. 613.

Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

Bedford Cut Stone Co. v. *Journeymen Stone Cutters' Association,* 274 U. S. 37.

The Circuit Court of Appeals in the present case (R. 367), found that a study of the entire record was quite convincing of the fact that the entire controversy is over the attempt of the defendants to prevent the sale of cut-rate milk. The controversy arises out of the attempt of the defendants to arbitrarily control the price of milk by preventing a more economic method of milk distribution. This Court has declared that the attempt to control the price of a commodity is itself a restraint of interstate trade:

United States v. *Trent Potteries,* 273 U. S. 392.

Interstate Circuit v. *United States,* 306 U. S. 208.

Admittedly the defendant union represents 5,300 of the less than 5,600 men who deliver milk in Chicago (R. 66, 76). The elimination of the small groups of cut-rate dairies would give the defendants complete control. This fact supplies the motive for the violence found by the lower courts to have accompanied the cut-rate business throughout. If the purpose is monopoly, all means may be enjoined. Reference may again be had to such decisions of this Court as *Local 167, I. B. T.* v. *United States,* 291 U. S. 293; *United States* v. *Brims,* 272 U. S. 549; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, and other decisions herein elsewhere referred to.

The secondary boycott for such purposes has been consistently declared to be illegal by the Circuit Court of Appeals of the Seventh Circuit in which this case arises: *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d)

825; and by the Supreme Court of the State of Illinois: *Wilson* v. *Hey,* 232 Ill. 389; *Carpenters Union* v. *Citizens Committee,* 333 Ill. 225; *Anderson Lind Manufacturing Co.* v. *Carpenters Union,* 308 Ill. 488; *Kemp* v. *Division 241,* 255 Ill. 213; *Barnes* v. *Typographical Union,* 232 Ill. 424; *Schuster* v. *International Association of Machinists,* 293 Ill. App. 177; *Fenske Bros.* v. *Upholsterers Union,* 358 Ill. 239; *Meadowmoor Dairies, Inc.* v. *Milk Wagon Drivers Union,* 371 Ill. 377; certiorari denied 308 U. S. .....; 84 L. ed. 95.

Existence of conspiracy is usually established by the acts committed and direct testimony of the conspiracy is not required; the defendants are charged with the natural consequences of their acts and no specific intent to restrain interstate commerce is required.

Interstate Circuit v. *United States,* 306 U. S. 208.

Eastern States Lumber Dealers' Association v. *United States,* 234 U. S. 614.

United States v. *Anderson,* 101 F. (2d) 325, determined January 17, 1939, in the Seventh Circuit.

In the case of *Leader* v. *Apex Hosiery Co.*, 108 F. (2d) 71, cited by defendants in which this Court has granted certiorari (February 26, 1940), the lower Court held that the "interruption to commerce (was) by way of stoppage of the appellee's manufacturing operations, was comparatively slight and indirect," page 80. Factually this case appears to differ greatly from the present where the entire market has been declared to be in interstate commerce, where the interference is with distribution and even with transportation, and where efforts to control price and eliminate competition, and the numerous other "special" circumstances are present. This Court will determine the correctness of the lower Court's decision upon the particular circumstances of the case.

A.

The Norris-LaGuardia Act grants no immunity to labor unions if their acts are illegal and violate the Anti-Trust Laws.

The defendants seek immunity by presenting the argument in their brief as though peaceful picketing was the only means used and unionization was the sole object. If such were the facts, the Anti-Trust Laws would not be violated regardless of the Norris-LaGuardia Act.

This Court in several decisions, which decisions have been followed throughout by the lower courts, has held that there are definite limitations as to what labor unions lawfully may do under the *Clayton Act*, and that such Act may not be used as a cloak of immunity for illegal activities:

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.

Bedford Cut Stone Co. v. *Stone Cutters Association*, 274 U. S. 37.

United States v. *Brims*, 272 U. S. 549.

Coronado Co. v. *United Mine Workers*, 268 U. S. 295.

United States v. *Norris*, 255 Fed. 423.

Alco-Zander Co. v. *Amalgamated Clothing Workers*, 35 F. (2d) 203.

Decorative Stone Co. v. *Building Trades Council*, 18 F. (2d) 333.

United States v. *National Association of Window Glass Manufacturers*, 287 Fed. 228.

Irving v. *Neal*, 209 Fed. 371.

Buyer v. *Guillan*, 271 Fed. 65.

Quinlivan v. *Dail-Overland Co.*, 274 Fed. 56.

United States v. *Railway Employees, Dept. A. F. L.*, 283 Fed. 479.

The Norris-La Guardia Act, by its very terms excepts cases where there is fraud or violence. (Section 4, subsection). The Courts have followed this construction: In *United Electrical Coal Companies* v. *Rice,* 80 F. (2d) 1, (C. C. A. 7th 1935), at page 8:

> "The public is amply protected as the bill is now drawn. It is a mistaken notion that some have that all injunctions are proscribed. There still is left to the Federal Courts the right to issue injunctions when there are unlawful acts threatened or committed; when there is fraud, when there is violence, and when there is crime, injunctions may issue. When any of those things are threatened or committed, injunctions may issue.
>
> The intention of Congress was thus clearly expressed. It was evidently not intended to take from courts of equity, jurisdiction of suits to restrain unlawful acts or acts of violence."

This Court in the *National Labor Relations Cases,* 301 U. S. 1, stated at page 31:

> "It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of congressional power. *Acts having that effect are not rendered immune because they grow out of a labor dispute.*

This Court, in the case of *Virginia Railway Co.* v. *System Federation,* 300 U. S. 515, determined that it was not the intention of the Railway Labor Act to be a cloak for criminal racketeering activities under the guise of a labor dispute.

In the case of *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468, this Court again expressly excepted all cases other

than bona fide labor disputes having lawful purposes to be effected by lawful means. This Court differentiated it from cases such as the present:

> "The sole purpose of the picketing was to acquaint the public with the facts and by gaining its support to induce Senn to unionize his shop." (page 480).

The various lower courts have likewise held that illegal acts may not be protected under the Norris-La Guardia Act, and injunction has been granted wherever it has been first determined the purpose or means were unlawful. *Scavenger Service Corporation* v. *Courtney,* 85 F. (2d) 825. *Fehr Baking Co.* v. *Bakers' Union,* 20 F. Supp. 691; *Mayo* v. *Dean,* 82 Fed. (2d) 554. The very cases cited by defendants at pages 36 and 37 of their brief clearly drew this distinction, and *injunction was granted* where illegality was shown. In the cases of *International Brotherhood of Teamsters* v. *International Union,* etc., 107 F. (2d) 871; *Houston Motor Lines* v. *Local Union,* 24 F. Supp. 619; *Pauly Jail Building* v. *International Association of Bridge Workers,* 29 F. Supp. 15; cited by defendants, *injunctions were granted,* and in the case of *Williams* v. *Birl,* 105 F. (2d) 940, the facts were clearly differentiated and the case affirms that the Norris-La Guardia Act is limited to legal labor disputes.

In the cases of *Terrio* v. *Nielson Co.,* 30 F. Supp. 77, and *Diamond Hosiery* v. *Leader,* 20 F. Supp. 467, cited by the defendants the Courts held that *interstate commerce was not involved* and the Norris-La Guardia Act need not be considered.

In the case of *Exchange Bakery* v. *Rifkin,* 245 N. Y. 260, also cited by the defendants, the Court there said:

> "It is quite true that, where unlawful picketing has been continued, where violence and intimidation have

been used, * * * a broad injunction *prohibiting all picketing may be granted.*" (Italics added.)

The decision in *Williams* v. *Quill*, 277 N. Y. 1, also cited by the defendants, makes a similar statement.

III.

This Court has determined that the constitutional guarantee of free speech does not prevent relief by injunction from words pursuant to illegal purposes and activities.

This question has been determined adversely to the defendants' contention in several decisions. In the case of *Aikens* v. *Wisconsin*, 195 U. S. 194, which case involved the construction of a Wisconsin statute on conspiracy wilfully to injure a trade or business, this Court in its opinion by Mr. Justice Holmes, at page 206 said:

> "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or commissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law."

This Court considered an analogous set of facts in the case of *Gompers* v. *Buck's Stove and Range Co.*, 221 U. S. 418. The question of free speech was considered in connection with the publication of an "unfair" list. At page 437, this Court said:

> "The defendant's attack on this part of the injunction raises no question as to an abridgement of free speech, but involves, the power of a court of equity to

enjoin the defendants from continuing a boycott, which, by words and signals, printed or spoken, caused or threatened irreparable damage."

The principle of the *Gompers* case, *supra,* was followed in the case of *Near* v. *Minnesota,* 283 U. S. 697.

That means otherwise lawful and ordinarily permissible as an exercise of the right of free speech may be condemned because of the purposes to which they are put has been determined by this Court in the cases of:

Dorchy v. *Kansas,* 272 U. S. 306.
Duplex Printing Press Co. v. *Deering,* 254 U. S. 443.

A precedent for the denial of certiorari in the present case is found in the case of *Meadowmoor Dairies, Inc.* v. *Milk Wagon Drivers Union of Chicago, No. 753,* (the same defendants as in the present case) 371 Ill. 377, certiorari denied by this Court, at 308 U. S. ....., on October 23, 1939. In that case the same defendants raised the same argument of free speech. The Supreme Court of the State of Illinois upon a similar record, there found illegality of purpose and means as did the Circuit Court of Appeals in the present case.

A similar precedent exists in the case of *Hughes* v. *Motion Picture Machine Operators,* 282 Mo. 304, 221 S. W. 95; certiorari denied, 254 U. S. 632.

The cases referred to by the defendants at pages 48 and 49 of their brief involving the validity of city ordinances or of state law do not involve the question in the present case. Nor do those cases there cited referring to the denial of liberty as to trial procedure. Those cases fall within the limits of the cases of *Lovell* v. *Griffin,* 303 U. S. 444, and *Palko* v. *Connecticut,* 302 U. S. 319.

The case of *Senn* v. *Tile Layers' Union*, 301 U. S. 468, only protects the right of free speech where no illegality of purpose or means is present. The same limitation is set by this Court in the case of *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, also referred to by the defendants.

CONCLUSION.

In conclusion, the plaintiffs-respondents respectfully submit that the decision of the Circuit Court of Appeals is in accord with the applicable decisions of this Court, and that the petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the 7th Circuit should be denied.

Respectfully submitted,

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